

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-054521

03/26/2015

COMMISSIONER BRIAN S. REES

CLERK OF THE COURT
E. Morgenstern
Deputy

FIRST AMERICAN TITLE INSURANCE
COMPANY

JAMIN S NEIL

v.

MARICOPA COUNTY TREASURERS OFFICE

MARICOPA COUNTY TREASURERS
OFFICE
NO ADDRESS ON RECORD

RICHARD J RUFFATTO

MINUTE ENTRY

The court has received a request to release excess proceeds to Corvette Card and a request to issue an expedited ruling. The court denies the request for release of proceeds without prejudice. Mr. Card may request reconsideration without paying any new fees when the appropriate additional information has been filed.

The court notes that the complaint identified two lienholders; the first mortgage holder and DES, pursuant to a lien for back child support. The petitioner claims to be a creditor of the decedent land owner (trustor). The petitioner also claims to be the appointed personal representative of the estate of the decedent landowner (trustor).

The court has received copies of documents from the defendant that the senior lien holder, DES, indicating that the lien has been satisfied or has otherwise been waived. The documents do not have the indicia of certification and do not have any explanation attached to them, and have not been recorded. However, taken as true, there do not appear to be any other parties who have superior rights to Mr. Card. Therefore the 180 day waiting period does not

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apply. The court directs that if the parties so choose, that they file original certified copies and recorded copies of the lien release.

The court understands from the pleadings that the lien is actually DES's attempt to collect the back child support that has now been assigned to Mr. Card. If true, it would appear that DES's lien could have been executed and the moneys taken by virtue of their superior lien rights, and then paid it over to Mr. Card. If the parties provide the court with the appropriate paperwork, the court would consider that approach.

In the alternative, Mr. Card may apply for the excess proceeds as the personal representative of the estate or as the sole heir and beneficiary. The court's interpretation of ARS section 33-812 is literal. The only person(s) who may collect the remainder excess proceeds are those "lienholders as they existed at the time of the sale." A creditor is not a lienholder. In order to be a lienholder, the creditor must have filed a certified copy of the judgment with the county recorder. This is the only way that a trustee can find the names of lienholders pursuant to a title search. In this case, the court does not have either a certified copy of the judgment or a certified copy with a recorders' stamp that it has been recorded. Similarly, creditors are not "encumbrancers" or "other obligors" because they have encumbered the property unless they have recorded their lien. Likewise, creditors, such as with credit cards or unsecured personal loans, etc., would have no idea that these matters are pending and that they have the potential to make claims that may be of equal or greater right than Mr. Card. Finally, ARS section 33-812 provides that the residual excess proceeds can only go to the trustor, or assignees of the trustor, of record before the trustee sale. Mr. Card is not the trustor or an assignee of the trustor. Upon death, the trustor's rights would go to the trustor's estate. Only the estate would then be entitled to the proceeds, not a creditor. The creditor then needs to make a claim to the estate.

The court understands that this is technical and maybe unnecessarily complicated method of resolving the proceeds from a sale, but the court believes that it is necessary, given that it is the only way that other creditors, heirs or beneficiaries can receive notice and make competing claims. For example, the decedent may have hospital bills in excess of Mr. Card's claim.

With this background the court will consider distribution of the proceeds if Mr. Card provides a certified copy of his appointment and letters of acceptance as the personal representative of the estate or that he is the sole surviving beneficiary or heir pursuant to ARS section 14-3971. Although the application indicated that Mr. Card had been appointed the personal representative, the court's review of its docket did not disclose such a case in this county. In any case, the court would then discharge the proceeds to Mr. Card in his capacity as the PR of the estate.